IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7183 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
Hon'ble MR.JUSTICE A.M.KAPADIA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SUPERINTENDENT OF POST OFFICE

Versus

RAJABBHAI RAJABHAI SIPAI

Appearance:
MS PJ DAVAWALA, Addl. Central Government Standing Counsel for Petitioners
RULE SERVED for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT
and
MR.JUSTICE A.M.KAPADIA

Date of decision: 01/05/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE A.M.KAPADIA)

1. In this Special Civil Application filed under Article 226/227 of the Constitution, petitioners challenge the judgment and order dated May 5, 1998 rendered in O.A. No.16 of 1992 by the Central Administrative Tribunal, Ahmedabad Bench (the Tribunal' for short) by which the O.A. filed by the respondent herein under Section 19 of the Central Administrative Tribunals Act challenging the oral order of termination of service of the respondent came to be allowed and thereby it has directed the petitioners to reinstate the respondent against any available vacancy and if not available, against the next vacancy which may arise with 50% back wages and also directed to take action within a period of three months from the date of receipt of a copy of the order.

2. A cursory view of the factual backdrop:

2.1. The respondent was appointed as an Extra Departmental Mail Carrier and Delivery Agent (EDCA/DA), Zazam B.O. (Banaskantha Division), with effect from August 8, 1989 and was continuously working as such upto September 28, 1991 till the date of termination of his services. On September 28, 1991, EDBPM informed him that he was discharged from service by order passed by Inspector of Post Offices, Radhanpur. According to the respondent, he had served the department for over 24 months and as such he is entitled to the protection under the provisions of Section 25-F of the Industrial Disputes Act, 1947 ('the Act' for short) since he has completed more than 240 days in a year and, therefore, according to him, termination order is bad and void ab-initio which is liable to be quashed and set aside as the petitioners have not followed the procedure prescribed under Section 25-F of the Act. He, therefore, prayed to quash and set aside the impugned order No. Nil dated September 28, 1991 passed by BPM Zazam and also further prayed to issue directions to the petitioners directing them to reinstate the respondent in service with all consequential benefits of back wages from the date of oral order of termination dated September 28, 1991 and further to direct the petitioners to regularize the services from August 8, 1989 since he has continuously worked on a vacant post.

2.2. The O.A. was contested by the petitioners by filing reply affidavit wherein it was admitted that the respondent was working on the said post from August 8, 1989 till September 28, 1991 as claimed by the respondent. However, the service of the respondent could not be regularized as EDCA/DA as he did not fulfil the educational qualification and was also not sponsored by

the Employment Exchange and in that circumstances the service of the respondent was discharged by oral order. Lastly it was averred that the respondent was not appointed on regular basis and his services could be terminated at any time and it was, therefore, urged to dismiss the O.A.

2.3. The Tribunal, on appreciation and evaluation of the evidence and the submissions advanced at the bar by the learned counsel appearing for the respective parties and on perusal of the record so also on interpretation of Section 25-F of the Act came to the conclusion that since the respondent has completed 240 days' of service in a year he is entitled to the protection under the said provisions of the Act and since one month's notice or one month's pay in lieu thereof has not been paid in view of the provisions of Section 25-F of the Act and also the retrenchment compensation has not been paid, the oral order of termination was liable to be quashed and resultantly the Tribunal quashed and set aside the oral order of termination and passed consequential order which has resulted in the filing of this petition at the instance of the petitioners/original respondents.

3. Ms. P.J. Davawala, learned Additional Central Government Standing Counsel, for the petitioners contended that the respondent was never appointed by the petitioners as he was serving as a substitute of another employee only on stop-gap arrangement and, therefore, section 25-F of the Act cannot be attracted. Therefore, according to her, the finding arrived at by the Tribunal is contrary to the provisions of the Act. What was stressed by the learned counsel was that the provisions of the Act would be attracted only in case of regular employment and, therefore, it was not necessary at all to give one month's notice or one month's pay in lieu thereof. It was, therefore, emphatically contended that the Tribunal has passed the order against the settled principles of service jurisprudence and hence it is required to be quashed and set aside by allowing this petition. She, therefore, urged to allow the petition.

4. We have considered the submissions advanced by the learned counsel for the petitioners and perused the documents forming part of the original application, the impugned order and also the relevant provisions of the Act. Though the respondent is duly served, he has not filed appearance.

5. Be it stated that this is a petition filed under Article 226/227 of the Constitution of India wherein the

constitutional powers under Article 226 of the Constitution of India, in a sense, are of wide amplitude. However, the writ powers are required to be exercised keeping in mind the celebrated parameters in presence of which only the special, extraordinary, plenary and discretionary powers could be invoked. Needless to mention that the court while exercising powers in a petition filed under Article 226/227 of the Constitution does not sit as an appellate authority against the order impugned. It is the decision making process which requires review and not the quality of the decision rendered by the lower court/tribunal.

7. In Mohan Amba Prasad Agnihotri v. Bhaskar Balwant Aher (2000) 3 SCC 190, the Supreme Court has held that powers of the High Court under Article 227 of the Constitution of India is supervisory and not appellate. The High Court can only interfere with the lower court's finding of fact if it is perverse or there is no evidence to support it. In Virendra Kashinath Ravat and another v. Vinayak N. Joshi and others, (1999) 1 SCC 47, the Supreme Court has reiterated the above view. In Devendra Nath Singh v. Civil Judge, Basti, (1999) 1 SCC 70, the Supreme Court has held that overstepping of the High Court under supervisory jurisdiction for interference with the concluded finding of fact arrived at by the lower authority, is improper. In State of Maharashtra v. Milind and others, (2001) 1 SCC 4, the Supreme Court has held that powers of judicial review of inferior tribunal's order is supervisory and not appellate.

8. Keeping in forefront the aforesaid celebrated principles, if we examine the present case there is no manner of doubt that the respondent was appointed as an Extra Departmental Mail Carrier and Delivery Agent (EDCA/DA), Zazam B.O. (Sabarkantha Division) on August 8, 1989 upto September 28, 1991 till the date of oral termination of his service by way of oral order and as such he has worked for more than 24 months on the said post. The question now, therefore, calls for determination is as to whether the respodnent is entitled to the protection under Section 25-F of the Act and if yes, whether the petitioners have followed the procedure laid down under Section 25-F of the Act before the termination of service of the respondent?

9. At this stage it would be appropriate to quote Section 25-F of the Act which reads as under:

"25-F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who

has been in continuous service for not less than one year under an employer shall be retrenched by that employer until

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in case of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by appropriate Government by notification in the Official Gazette."

10. A plain reading of the aforesaid provisions unequivocally clarifies that no workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by the employer until the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice and the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and also notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by appropriate Government by notification in the Official Gazette.

11. In view of the aforesaid provisions of the Act and more particularly admitted position of the factual aspect that the respondent has completed more than 240 days of service in a year, provisions of section 25-F of the Act shall be attracted and admittedly the petitioners have not followed the procedure prescribed under section 25-F of the Act and by simply conveying orally the service of the respondent came to be terminated and, therefore, in our view, since the petitioners have violated the statutory provisions of the Act and,

therefore, order which was impugned before the Tribunal can never be sustained, the Tribunal has very rightly quashed and set aside the said order by holding the oral order of termination of the respondent as illegal by directing the petitioners to reinstate the respondent against any available vacancy and if not available, against the next vacancy which may arise and also to pay 50% back wages and to complete this exercise within a period of three months. Nothing has been successfully shown or pointed out from the record or spelt out which would even remotely indicate that the ultimate conclusion arrived at or order recorded by the tribunal is in any way illegal or erroneous.

12. Seen in the above context, in our view, no illegality is committed by the Tribunal. On the contrary, the Tribunal has very rightly upset the order which was passed by the petitioners in clear violation of the statutory provisions of the Act. The Tribunal has reached to a just and correct conclusion which does not require any interference in this petition filed under Article 226/227 of the Constitution wherein the jurisdictional sweep is very much circumscribed. At the risk of repetition we reemphasize that it is a settled proposition of law that powers vested in High Court under Article 226/227 of the Constitution of India should be exercised sparingly. The High Court must confine itself to the correcting of error of jurisdiction committed by the courts below and it cannot assume suo motu jurisdiction of appellate court and correct every mistake assumed to have been committed by the courts below. It is a review of the decision making process and not the decision itself. The High Court cannot reappreciate preliminary or perceptive facts found by the Tribunal under the statute.

13. For the foregoing reasons, the petition fails and accordingly is rejected. Rule is discharged.

(J.N. Bhatt, J.)

1.5.2001. (A. M. Kapadia, J.)

(karan)